

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LYNN DINORSCIA, MARGARET D. FRITZ,	:	
RHONDA PAYNE, RUTH J. WILLIAMS,	:	Civil Action No. 05-00246 JJF
and TIFFANY R. WILSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
AGILENT TECHNOLOGIES, INC.,	:	
	:	
Defendant.	:	

**MOTION TO AMEND COMPLAINT**

PLAINTIFFS, Lynn DiNorscia, Margaret D. Fritz, Rhonda Payne, Ruth J. Williams, and Tiffany R. Wilson (hereinafter, collectively, "Plaintiffs"), by and through their undersigned counsel, hereby move this Honorable Court for an Order, in the form attached hereto, allowing the amendment of their complaint. In support thereof, Plaintiffs state as follows:

1. Plaintiffs have filed suit alleging wrongful termination, breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. This matter is before this Court following transfer from the Northern District of California.
2. Shortly after this matter was transferred to the District of Delaware, and after a brief period wherein Plaintiffs arranged to associate with local counsel, a request was made to counsel for the Defendant to allow a second amendment to the complaint to add a separate count for fraud. This request was made pursuant to Fed. R. Civ. P. 15(a). Defendant's counsel declined that request, and this matter is therefore being presented to the Court.

3. The Scheduling Order signed by the Court on November 28, 2005, establishes December 5, 2005 as the deadline for filing motions to amend.
4. A copy of the proposed “Second Amended Complaint,” with the changes identified by underline, is attached hereto as Exhibit “A” and is incorporated herein by reference.
5. Federal Rule of Civil Procedure 15(a) sets forth the requirements to amend a pleading, and this matter has progressed past the time period for an amendment as a matter of course.
6. The Federal Rules of Civil Procedure provide that leave to amend shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). Federal policy strongly favors determination of cases on their merits. Therefore, the rule of pleadings is limited, and leave to amend pleadings is freely given unless the opposing party makes a showing of undue prejudice or bad faith or dilatory motive on the part of the moving party. *Folman v. Davis*, 371 U.S. 178, 182 (1962); *FilmTec Corp. v. Hydranautics*, 67 F.3d 931, 935-936 (Fed.Cir. 1995); *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9<sup>th</sup> Cir. 1997).
7. This policy is to be applied with extreme liberality. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9<sup>th</sup> Cir. 2003); *Moore v. Baker*, 989 F.2d 1129, 1131 (11<sup>th</sup> Cir. 1993).
8. Furthermore, “amendments seeking to add claims are to be granted more freely than amendments adding parties.” *Becherer v. Meryl Lynch, Pierce, Fenner and Smith, Inc.*, 43 F.3d 1054, 1069 (6<sup>th</sup> Cir. 1995); *Union Pacific R.R. Co., v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9<sup>th</sup> Cir. 1991).

9. The parties seeking leave to amend need only establish a reason why amendment is required. The burden is then on the party opposing the motion to convince the Court that justice requires denial. *Shipner v. Eastern Airlines, Inc.*, 868 F.2d 401, 406-407 (5<sup>th</sup> Cir. 1989).
10. Plaintiffs seek leave to amend their complaint to include a claim for fraud. This claim is based upon the same general set of facts as originally plead in California prior to the transfer of this action. Plaintiffs also desire to make amendments as to the form of the complaint correcting typographical items such as the status of the Court.
11. As this amendment is based upon the same general set of facts as originally plead, there would be no prejudice to Defendant by allowing this amendment.

WHEREFORE, Plaintiffs respectfully request that this Motion be granted, and leave to amend the complaint in the form attached hereto be allowed.

TIGHE, COTTRELL & LOGAN, P.A.

Dated: December 5, 2005

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**EXHIBIT “A”**